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**Digests of Decisions  
of the Comptroller  
General of the  
United States**

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## Notice

To provide a comprehensive overview of Comptroller General decisions, the Office of General Counsel has expanded its monthly pamphlet of *Digests of Unpublished Decisions of the Comptroller General of the United States* to include the digests of all decisions printed in the annual volume of *Decisions of the Comptroller General of the United States*. Effective immediately, the digests of all substantive legal decisions rendered by the Comptroller General will be presented in one publication retitled *Digests of Decisions of the Comptroller General of the United States*. We hope you find this unified pamphlet a useful means for researching Comptroller General decisions.

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# Preface

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This publication is one in a series of monthly pamphlets entitled "Digests of Decisions of the Comptroller General of the United States" which have been published since the establishment of the General Accounting Office by the Budget and Accounting Act, 1921. A disbursing or certifying official or the head of an agency may request a decision from the Comptroller General pursuant to 31 U.S. Code § 3529 (formerly 31 U.S.C. §§ 74 and 82d). Decisions concerning claims are issued in accordance with 31 U.S. Code § 3702 (formerly 31 U.S.C. § 71). Decisions on the validity of contract awards are rendered pursuant to the Competition in Contracting Act, Pub. L. 98-369, July 18, 1984. Decisions in this pamphlet are presented in digest form. When requesting individual copies of these decisions, which are available in full text, cite them by the file number and date, e.g., B-229329.2, Sept. 29, 1989. Approximately 10 percent of GAO's decisions are published in full text as the Decisions of the Comptroller General of the United States. Copies of these decisions are available in individual copies, in monthly pamphlets and in annual volumes. Decisions in these volumes should be cited by volume, page number and year issued, e.g., 68 Comp. Gen. 644 (1989).

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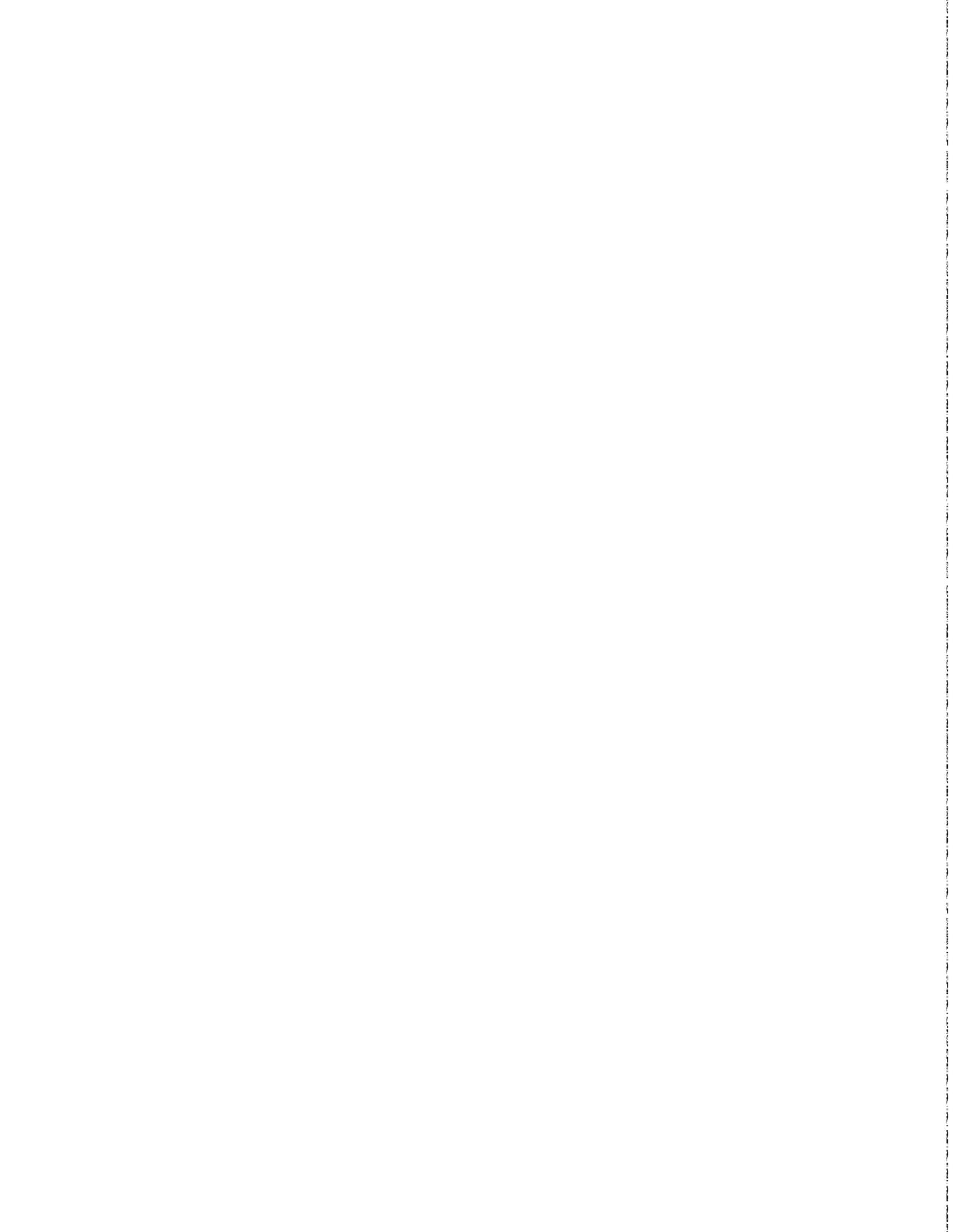
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# Appropriations/Financial Management

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**B-235167, January 8, 1990**

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## Appropriations/Financial Management

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### Accountable Officers

- Cashiers
- ■ Relief
- ■ ■ Physical losses
- ■ ■ ■ Theft

Cashier is relieved of liability for loss of funds in the amount of approximately \$7,278. Presumption of negligence on the part of the accountable officer is rebutted when the record shows there is evidence of faulty agency security resulting in knowledge of the safe combination by persons other than the accountable officer.

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**B-231513, January 16, 1990\*\*\***

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## Appropriations/Financial Management

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### Judgment Payments

- Permanent/indefinite appropriation
- ■ Availability

A court order finding defendant agency guilty of discrimination and directing the specific administrative action of developing new, nondiscriminatory employment systems is not a money judgment for which 31 U.S.C. § 1304, the Judgment Fund, is available as a source of funding. The fees and expenses of an expert paid for by defendant agency to help develop the new systems were neither "costs" of the litigation nor part of the plaintiffs' attorney fees. Accordingly, the expert's fees and expenses are properly paid for out of agency appropriations, not the Judgment Fund.

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**B-234954, B-235043, January 17, 1990**

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## Appropriations/Financial Management

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### Accountable Officers

- Disbursing officers
- ■ Liability restrictions
- ■ ■ Statutes of limitation

Since Treasury disbursing official received notice of losses resulting from the negotiation of both the original and replacement checks more than three years ago, this Office is unable to grant relief. The accountable officer has no personal liability since the applicable accounts have been settled by operation of law. We consider the date of receipt by the agency of substantially complete accounts, or where records are retained at the site, the end of the period of the account, as the point from which the 3-year limitation period begins to run.

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**B-236667, January 26, 1990**

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**Appropriations/Financial Management**

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**Appropriation Availability**

- Amount availability
  - ■ Augmentation
  - ■ ■ Lump-sum appropriation
- 

**Appropriations/Financial Management**

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**Appropriation Availability**

- Purpose availability
- ■ Lump-sum appropriation
- ■ ■ Augmentation
- ■ ■ ■ Multi-year appropriation

The Department of Education may use funds in its fiscal year 1990 lump-sum appropriation for Student Financial Assistant to meet projected shortfalls in its 1989-1990 Pell Grant award year in addition to \$131 million provided for that purpose. On its face the appropriation is available for obligation from October 1, 1989 through September 30, 1991, which includes nine months of the 1989-1990 award year. There is also nothing in the language of the appropriation indicating that the \$131 million was intended to be the exclusive amount available for shortfalls. Further, the legislative history of the appropriation shows a clear intent that funds from the lumpsum appropriation be used to cover the shortfall should the \$131 million prove insufficient.

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# Civilian Personnel

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**B-234500.2, January 2, 1990**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Reimbursement
- ■ ■ Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-235203, January 2, 1990**

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**Civilian Personnel**

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**Relocation**

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Eligibility
- ■ ■ ■ Extension

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-236751, January 2, 1990**

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**Civilian Personnel**

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**Leaves Of Absence**

- Sick leave
- ■ Charging
- ■ ■ Retroactive adjustments

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-235979, January 5, 1990**

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**Civilian Personnel**

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**Relocation**

- Temporary quarters
- ■ Actual subsistence expenses
- ■ ■ Reimbursement
- ■ ■ ■ Amount determination

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-237883, January 5, 1990**

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**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Credit cards
- ■ ■ Use
- ■ ■ ■ Procedures

Standards for allowing Department of Commerce to use corporate charge cards under limited circumstances are discussed.

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**B-231717, January 10, 1990**

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**Civilian Personnel**

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**Relocation**

- Expenses
- ■ Reimbursement
- ■ ■ Eligibility
- ■ ■ ■ Government advantage

**Civilian Personnel**

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**Relocation**

- Household goods
- ■ Commuted rates
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-234799, January 11, 1990**

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**Civilian Personnel**

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**Compensation**

- Work schedules
  - ■ Time/attendance reports
- 

**Civilian Personnel**

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**Leaves Of Absence**

- Leave-without-pay
- ■ Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-235374, January 11, 1990**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
  - ■ Reimbursement
  - ■ ■ Eligibility
  - ■ ■ ■ New residence construction
- 

**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Taxes
- ■ ■ Reimbursement
- ■ ■ ■ Eligibility

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-230385, January 16, 1990**

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**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Documentation procedures
- ■ ■ Burden of proof

Where an employee submits false receipts for lodgings in connection with temporary duty travel, the evidence may overcome the presumption of honesty and fair dealing and constitute fraud. A fraudulent claim for lodging costs taints the entire claim of per diem for a given day.

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## **Civilian Personnel**

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### **Travel**

- **Actual subsistence expenses**
- ■ **Fraud**
- ■ ■ **Allegation substantiation**
- ■ ■ ■ **Evidence sufficiency**

Where the agency does not establish fraud by the employee in the submission of claims for lodging costs, the agency may still deny reimbursement or recoup prior payments for lodging costs if the employee has not submitted sufficient evidence that the costs were actually incurred.

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## **Civilian Personnel**

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### **Travel**

- **Lodging**
- ■ **Expenses**
- ■ ■ **Reimbursement**

An employee's claim for temporary duty lodging costs in a residence which he owns and holds as rental property may not be paid absent clear and convincing evidence that but for his lodging there while on temporary duty, the residence would have been rented during the period of his claim.

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## **Civilian Personnel**

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### **Travel**

- **Actual subsistence expenses**
- ■ **Vouchers**
- ■ ■ **Payments**
- ■ ■ ■ **Propriety**

The requirement in paragraph 1-11.4 of the Federal Travel Regulations for supervisory review of travel vouchers merely requires a verification that the travel was performed and does not require a verification of the expenses claimed.

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## **B-237234, January 18, 1990**

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### **Civilian Personnel**

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#### **Compensation**

- **Overpayments**
- ■ **Error detection**
- ■ ■ **Debt collection**
- ■ ■ ■ **Waiver**

This summary letter decision addresses well established rules which have been discussed in previous Comptroller General decisions. To locate substantive decisions addressing this issue, refer to decisions indexed under the above listed index entry.

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**B-237947, January 18, 1990**

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**Civilian Personnel**

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**Relocation**

- Residence transaction expenses
- ■ Miscellaneous expenses
- ■ ■ Reimbursement

An employee who contracted to buy a house at her old duty station and then responded to a vacancy announcement, accepted a new job, and transferred to a new duty station, forfeited a real estate deposit when she did not fulfill the contract to buy the house at the old duty station. The forfeited deposit may not be reimbursed as a residence transaction expense under 5 U.S.C. § 5724a(a)(4) but may be reimbursed as a miscellaneous expense under 5 U.S.C. § 5724a(b) and implementing regulations in Federal Travel Regulations (FTR), para. 2-3.3 (Supp. 4, Aug. 23, 1982). The employee may be reimbursed more than the \$700 already paid for miscellaneous expenses under FTR, para. 2-3.3a only by documenting under FTR, para. 2-3.3b all the miscellaneous expenses claimed, regardless of the agency's incomplete advice concerning reimbursement.

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**B-233841, January 26, 1990\*\*\***

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**Civilian Personnel**

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**Travel**

- Lodging
- ■ Reimbursement
- ■ ■ Government quarters
- ■ ■ ■ Availability

Defense Department civilian employee on temporary duty who left government quarters which she considered inadequate and moved into commercial lodgings may not be reimbursed her commercial lodging costs where installation officials determined that the government quarters were adequate and therefore declined to issue a statement of nonavailability pursuant to 2 JTR para. C1055. GAO will not substitute its judgment for that of officials who are responsible for determining adequacy of government quarters absent clear evidence that their determination was arbitrary or unreasonable.

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**B-236110, January 26, 1990**

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**Civilian Personnel**

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**Travel**

- Travel regulations
- ■ Applicability

**Civilian Personnel**

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**Travel**

- Travel expenses
- ■ Reimbursement
- ■ ■ Official business
- ■ ■ ■ Determination

The Drug Enforcement Administration may not reimburse its employees for the costs of attending the funeral of a fellow employee killed in the line of duty. In the absence of a statute expressly authorizing payment, a federal agency may not pay for the travel costs of employees attending the funeral of a fellow employee since such travel is not official travel within the meaning of the travel laws and regulations.

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**B-233454, January 31, 1990**

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**Civilian Personnel**

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**Relocation**

■ **Residence transaction expenses**

■ ■ **Finance charges**

In the absence of sufficient evidence showing that a relocation expense, characterized by the lending institution on the Settlement Certificate as a "NonRefundable Commitment Fee," is a loan origination fee, the 1 percent fee must be viewed as a finance charge, which is not reimbursable.

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# Military Personnel

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**B-232354, January 16, 1990\*\*\***

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## Military Personnel

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### Relocation

- Relocation travel
- ■ Reimbursement
- ■ ■ Circuitous routes

Notwithstanding orders directing a member to report to a specific port of embarkation incident to a transfer overseas, the member's entitlement to travel allowances is based on travel from the appropriate port of embarkation serving his temporary duty station when the orders do not direct travel to some other point.

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## Military Personnel

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### Travel expenses

- Debt collection

A member's claim for reimbursement of a collection made against him for the cost of traveling on a government aircraft pursuant to personal business is denied when the member alleges that he was eligible for space available travel but does not offer documentary evidence demonstrating that he would have been permitted to board the flight taken as a space available passenger.

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**B-233404.2, January 26, 1990\*\*\***

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## Military Personnel

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### Pay

- Survivor benefits
- ■ Annuity payments
- ■ ■ Offset
- ■ ■ ■ Social security

When a widow's Survivor Benefit Plan annuity is reduced because she receives social security benefits based on her husband's lifetime earnings, the reduction cannot exceed the amount she actually receives from Social Security.

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**B-236270, January 26, 1990**

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## Military Personnel

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### Pay

- Overpayments
- ■ Error detection
- ■ ■ Debt collection
- ■ ■ ■ Waiver

A discharged service member's request for waiver of his debt arising because of failure to liquidate advance payments made to him may not be considered for waiver under 10 U.S.C. § 2774 since only erroneous payments may be considered under that statute and these payments were valid when made. Resuming regular payments prior to liquidation of the advance does not change the regular payments or the advance into erroneous payments.

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# Miscellaneous Topics

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**B-237919.3, January 12, 1990**

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## Miscellaneous Topics

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### Federal Administrative/Legislative Matters

#### ■ Congress

#### ■ ■ Library services

#### ■ ■ ■ Fees

Under 2 U.S.C. § 150, the Library of Congress is authorized to charge subscribers of MARC tapes and records a fee equal to its cost plus ten percent. The Library is not presently authorized to charge a fee in an amount greater than its cost plus ten percent or to vary its fees among subscribers. The Library is authorized to set fees to reflect its direct and indirect costs.

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# Procurement

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**B-236777.2, January 2, 1990**

**90-1 CPD 2**

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## Procurement

### Bid Protests

- Antitrust matters
- ■ GAO review

General Accounting Office (GAO) will not consider arguments that awardee should be prosecuted for alleged criminal conduct—such as knowingly making false representations in its bid or engaging in collusive bidding—since such matters are beyond GAO's bid protest function and should be referred to the Department of Justice.

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## Procurement

### Bid Protests

- Award pending appeals
- ■ Propriety

General Accounting Office (GAO) will not review agency's determination that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for a GAO decision.

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## Procurement

### Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Adverse agency actions

Protest of agency's failure to set aside solicitation for small business is dismissed as untimely where not filed within 10 days after agency took the adverse action of opening bids in the face of an agency-level protest.

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## **Procurement**

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### **Competitive Negotiation**

- Requests for proposals
  - ■ Terms
  - ■ ■ Shipment schedules
- 

## **Procurement**

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### **Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Allegation that awardee cannot perform in accordance with a solicitation's delivery schedule concerns the contracting agency's affirmative responsibility determination which General Accounting Office will review only where the protester makes a showing that contracting officials acted fraudulently or in bad faith or misapplied definitive responsibility criteria.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Bidder's failure to complete the solicitation's contingent fee representation does not affect the responsiveness of its bid, since completion of the clause is not necessary to determine whether the bid meets the material requirements of the solicitation.

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**B-236850, January 2, 1990**

**90-1 CPD 3**

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Omission

Protest that bid must be rejected as nonresponsive where a bidder acknowledges an amendment containing a Procurement Integrity Certificate clause, but fails to complete and sign the certificate itself, is denied where bids were opened prior to December 1, 1989, but award was not made prior to that date; the requirement for the certificate, which implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988, has been eliminated in such cases by section 507 of the Ethics Reform Act of 1989.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Determination criteria

Protest that shipping information contained in bid indicates that dimensions of bidder's truck exceed the dimensions specified in the invitation for bids, thus rendering the bid nonresponsive, is denied; dimensions provided by bidder under shipping information were reasonably interpreted by contracting agency as not referring to size of truck itself, and other circumstances pertaining to the bid indicated that bidder did not intend to qualify its bid.

**Procurement**

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**Bid Protests****■ Interested parties**

A protester has no standing to claim an error in a competitor's bid since it is the responsibility of the contracting parties—the government and the low bidder—to assert rights and present the necessary evidence to resolve mistake questions.

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**Procurement**

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**Contractor Qualification**

- Responsibility**
  - ■ Contracting officer findings**
  - ■ ■ Affirmative determination**
  - ■ ■ ■ GAO review**
- 

**Procurement**

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**Contractor Qualification**

- Responsibility/responsiveness distinctions**
- ■ Sureties**
- ■ ■ Financial capacity**

Protest that agency should not have accepted protester's bid because it is too low, is dismissed since there is no legal basis on which to object to the submission or acceptance of a below cost bid. Protester's suggestion that awardee will not be able to perform at the price it bid concerns the contracting officer's affirmative determination of responsibility, a matter which our Office does not generally review.

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**Procurement**

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**Contractor Qualification**

- Responsibility**
- ■ Contracting officer findings**
- ■ ■ Bad faith**
- ■ ■ ■ Allegation substantiation**

Protester's contention that the contracting officer's determination of responsibility in the face of awardee's bankruptcy proceedings amounted to bad faith is denied where actions by bankruptcy court secured payment to subcontractors and suppliers for this contract and awardee recently satisfactorily performed other similar contracts for the agency.

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**Procurement**

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**Contractor Qualification**

- Responsibility/responsiveness distinctions**
- ■ Sureties**
- ■ ■ Financial capacity**

Protest that alleged defect in certificate of sufficiency submitted with bid bond made low bid non-responsive is denied since certificate serves only to assist the contracting officer in determining the surety's responsibility.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester is not an interested party to maintain protest since it would not be eligible to receive awards due to initiation of debarment proceedings.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protest allegation challenging award by firm properly found technically unacceptable is dismissed because protester is not an interested party since it would not be in line for award if allegation were resolved in its favor.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protest allegation challenging award by firm properly found technically unacceptable is dismissed because protester is not an interested party since it would not be in line for award if allegation were resolved in its favor.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision dismissing protest as untimely is denied where the information provided by the protester does not show that the prior decision contains either errors of fact or of law.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Good cause exemptions
- ■ ■ ■ Applicability

An untimely protest will not be considered under the good cause exception to the bid protest timeliness rules where the protester had sufficient time, after learning that the agency did not agree

that the solicitation contained improprieties, to file its protest before the closing date for receipt of proposals.

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Significant issue exemptions**
- ■ ■ ■ **Applicability**

Invoking the significant issue exception to General Accounting Office timeliness rules is not warranted where the issue of alleged solicitation improprieties is not of widespread interest to the procurement community.

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**B-235977.2, B-235977.3, January 4, 1990**

**90-1 CPD 10**

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Apparent solicitation improprieties**

Where solicitation explains how agency will apply evaluation preference for small disadvantaged businesses (SDBs) and agency applied preference as set out in solicitation, protest filed after award that evaluation preference is improper is untimely since it is based on the evaluation scheme as set out in solicitation and therefore should have been filed before closing date for receipt of proposals.

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## **Procurement**

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### **Contractor Qualification**

- **Responsibility criteria**
- ■ **Performance capabilities**

Requirement that offerors under solicitation for bulk fuels designate as a source of supply a refinery operating at the time the offeror submits its best and final offer (BAFO) is met where agency observed refinery producing petroleum products in a test run 1 day after BAFO was submitted.

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## **Procurement**

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### **Contractor Qualification**

- **Responsibility criteria**
- ■ **Performance capabilities**

Where offeror does not meet specific letter of solicitation responsibility requirement but has exhibited a level of achievement which in the agency's reasonable view is equivalent to that required, offeror may be considered to have satisfied requirement.

**Procurement**

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**Specifications**

- **Minimum needs standards**
- ■ **Competitive restrictions**
- ■ ■ **Performance specifications**
- ■ ■ ■ **Geographic restrictions**

Protest that solicitation did not require establishment of local travel agency offices but rather one office for numerous areas is denied where solicitation contained list of cities requiring local offices and contemplated separate awards for 13 areas based on separate proposals for each area.

**Procurement**

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**Competitive Negotiation**

- **Offers**
- ■ **Competitive ranges**
- ■ ■ **Exclusion**
- ■ ■ ■ **Administrative discretion**

Proposal, which, although labeled acceptable, was rated significantly inferior to those included in the competitive range, was properly found outside of the competitive range, where, after reasonably evaluating the proposal, the contracting agency determined that the proposal had no reasonable chance of being selected for award because the relative quality of the proposal, as compared to the other offerors, would require significant revisions and specific agency direction in order for it to be made competitive for award.

**Procurement**

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**Contractor Qualification**

- **Responsibility criteria**
- ■ **Organizational experience**

Agency's determination that awardee met requirement that manufacturer possess 3 years experience with roofing system specified in solicitation is unobjectionable where record indicates manufacturer had at least 3 years experience with the same basic type of roofing system, if not necessarily with all the same materials to be used on current project.

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**Procurement**

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**Specifications**

- **Minimum needs standards**
- ■ **Determination**
- ■ ■ **Administrative discretion**

Where protester argues that awardee's proposed roofing system does not meet specification requirement for 100 percent polyester ply sheets, but protester proposed using ply sheets of the same composition as offered by awardee and agency has determined that both roofing systems will satisfy its minimum needs, contracting officials have treated both offerors equally and there is no basis to sustain protest against award.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester has no standing to claim an error in a competitor's offer; rather, it is the responsibility of the contracting parties—the government and the offeror in line for award—to assert rights and present the necessary evidence to resolve mistake questions.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
  - ■ Terms
  - ■ ■ Compliance
- 

**Procurement**

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**Competitive Management**

- Contract terms
- ■ Compliance
- ■ ■ GAO review

Whether an offeror will actually deliver a product in compliance with specifications is a matter of contract administration, which is the responsibility of the contracting agency and not within the purview of the General Accounting Office's bid protest function.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
  - ■ Terms
  - ■ ■ Shipment schedules
- 

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Protest that awardee lacks the capacity to meet the required delivery schedule challenges the responsibility of the awardee; our Office will not review an agency's affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the contracting officials or that definitive responsibility criteria have not been met.

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**Procurement**

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**Bid Protests**

- Moot allegation
- ■ GAO review

Protester has no basis to object to the agency decision to hold discussions and request best and final offers where firm is not low if discussions were not held, and discussions effectively provide a new opportunity for firm to compete for award.

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## **Procurement**

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### **Competitive Negotiation**

- Discussion
- ■ Offers
- ■ ■ Clarification
- ■ ■ ■ Propriety

Protester has no basis to object to the agency decision to hold discussions and request best and final offers where firm is not low if discussions were not held, and discussions effectively provide a new opportunity for firm to compete for award.

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**B-237161, January 4, 1990**

**90-1 CPD 16**

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## **Procurement**

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### **Sealed Bidding**

- Low bids
- ■ Error correction
- ■ ■ Price adjustments
- ■ ■ ■ Propriety

Low bid was properly corrected to include amount omitted due to an extension error where clear and convincing evidence established both the existence of the mistake and the amount the bidder intended to include in its bid calculations and the bid will remain low by approximately eight per cent.

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**B-237429, January 4, 1990**

**90-1 CPD 17**

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Omission

Contracting agency's omission of mandatory drug-free workplace clauses from solicitation and failure to obtain low bidder's agreement to clauses before award does not require termination of awardee's contract where no bidder was prejudiced by the omission, the actual needs of the government were met by the award and termination would serve no useful purpose.

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**B-227179.2, January 5, 1990**

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## **Procurement**

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### **Payment/Discharge**

- Shipment costs
- ■ Additional costs
- ■ ■ Evidence sufficiency

Carrier's claims for additional transportation charges, based on a terminal service charge contained in a participating tariff bureau's government rate tender, are valid even though the bureau tender is not specifically listed as a governing publication in the carrier's applicable individual rate tender. So long as the applicable individual tender contains no provision contrary to the intent to include such a charge, and a specifically listed governing publication (*e.g.*, a bureau tender) in turn is specifically governed by another publication (*e.g.*, another bureau tender) containing the charge, a terminal service charge contained in the indirectly referenced governing publication is incorporated by reference into the tender.

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## **Procurement**

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### **Payment/Discharge**

- **Shipment costs**
- ■ **Additional costs**
- ■ ■ **Payment time periods**
- ■ ■ ■ **Statutes of limitation**

Although 31 U.S.C. § 3726(a) generally requires that claims for transportation charges be received at GSA within 3 years, this Office will review a claim filed directly with this Office if it is filed prior to the expiration of the statute of limitations.

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## **Procurement**

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### **Payment/Discharge**

- **Shipments**
- ■ **Carrier liability**
- ■ ■ **Amount determination**
- ■ ■ ■ **GAO review**

A carrier's request for review of a General Services Administration (GSA) transportation settlement under 31 U.S.C. § 3726 must be received in this Office not later than 6 months (excluding time of war) after GSA takes action or within the period specified in 31 U.S.C. § 3726(a), whichever is later. Although the carrier submitted copies of letters that it asserts it sent to this Office requesting review, and which are dated within the period, there is no record in this Office that the letters were received. The copies alone, without other substantiating evidence, are not enough to establish that the claims for transportation charges were received within the statute of limitations, and therefore, such claims are barred.

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**B-235205.2, January 5, 1990**

**90-1 CPD 18**

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## **Procurement**

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### **Bid Protests**

- **GAO decisions**
- ■ **Recommendations**
- ■ ■ **Modification**

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## **Procurement**

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### **Bid Protests**

- **GAO decisions**
- ■ **Reconsideration**

Prior recommendation to terminate contract is modified where agency advises contract is substantially complete. Instead, protester is entitled to recover reasonable bid preparation costs and costs of filing and pursuing its protest.

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**B-235635.2, January 5, 1990**

**90-1 CPD 19**

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## **Procurement**

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### **Bid Protests**

- **GAO decisions**
- ■ **Recommendations**
- ■ ■ **Modification**

Prior recommendation to terminate contract is modified where agency advises contract is substantially complete. Instead, protester is entitled to recover reasonable bid preparation costs and costs of filing and pursuing its protest.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Pre-award samples
- ■ ■ ■ Acceptability

Where contracting officer could not reasonably conclude from previous performance history that the incumbent contractor's product complied with current requirements, waiver of bid sample requirement under the solicitation's bid sample provision and subsequent award to incumbent was improper.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency reasonably determined to award contract to higher-priced, higher technically rated proposal where evaluation criteria provided that technical quality was more important than price.

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**Procurement**

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**Competitive Negotiation**

- Discussion reopening
- ■ Propriety

An agency properly may consider the impact of a best and final offer (BAFO) on an otherwise unchanged technical proposal and the offeror assumes the risk that changes in its BAFO might raise questions which result in a lower technical score.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Competitive ranges
- ■ ■ Inclusion
- ■ ■ ■ Effects

Inclusion of a proposal in the competitive range does not necessarily mean that it is technically equal to other proposals in the competitive range so as to make price determinative of award.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Oral amendments

Alleged oral advice by agency contract negotiator that closing date for receipt of proposals would be extended by amendment does not constitute an oral amendment and is not binding on the government.

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**Procurement**

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**Competitive Negotiation**

- Best/final offers
- ■ Rejection
- ■ ■ Ambiguous offers

Agency properly rejected protester's best and final offer which was ambiguous with regard to protester's intention to subcontract guard services where solicitation prohibited subcontracting those services.

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**Procurement**

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**Competitive Negotiation**

- Unbalanced offers
- ■ Materiality
- ■ ■ Determination
- ■ ■ ■ Criteria

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**Procurement**

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**Contract Types**

- Fixed-price contracts
- ■ Price determination
- ■ ■ Indefinite quantities

Where solicitation placed heavy emphasis on initial order quantity in price evaluation, and where record contains no evidence that acceptance of low evaluated offer would result in other than the lowest ultimate cost to the government, protest against allegedly unbalanced offer is denied.

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**Procurement**

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**Sealed Bidding**

- All-or-none bids
- ■ Responsiveness

Low bid is properly determined to be responsive as an "all or none" bid where bidder provides one lump-sum price for work required rather than individual prices for six line items (base item plus five additives) in the solicitation's schedule.

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**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Omission

Protest against award of a contract to a bidder that acknowledges an amendment containing a Procurement Integrity Certificate clause but fails to sign the Certificate itself with his bid is denied since in light of the suspension of the requirement for the Certificate, the failure to sign the Certificate prior to bid opening is immaterial and provides no basis to disturb the award.

**Procurement**

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**Competitive Negotiation**

- Offers
  - ■ Risks
  - ■ ■ Pricing
- 

**Procurement**

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**Specifications**

- Minimum needs standards
- ■ Risk allocation
- ■ ■ Performance specifications

Protest allegation that solicitation provision, which requires contractor to lodge its employees in a privately operated facility, places undue cost risk on offerors is denied where the solicitation provides that the contractor's costs of lodging will be reimbursed by the government and any other costs to the contractor are easily calculable.

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**Procurement**

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**Competitive Negotiation**

- Competitive advantage
- ■ Non-prejudicial allegation

Protest that operator of lodging facility has a competitive advantage is denied where protester does not show what advantage the operator is alleged to have or that the alleged advantage was caused by any unfair action by the government.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Responsibility
- ■ ■ Negative determination
- ■ ■ ■ Effects

Contracting agency reasonably found bidder nonresponsible where bidder failed to provide sufficient information to permit a finding that the individual sureties on its bid bond were acceptable.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

A contracting officer's determination that a small business firm is nonresponsible need not be referred to the Small Business Administration when the determination is based upon the unacceptability of the bidder's bond sureties.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest against a restrictive geographic specification in a solicitation is untimely filed after the closing date for responses to *Commerce Business Daily* (CBD) announcement where the restriction was stated in the CBD announcement.

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**B-235526.2, January 8, 1990**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Additional information

Since, based on further review of the record, including new information submitted by agency, it appears that initial protest with respect to cost evaluation issue may have been incorrectly dismissed as untimely, General Accounting Office reinstates that issue and considers it on the merits.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Agency decision to select for award higher cost, higher rated technical proposal is unobjectionable where under solicitation evaluation scheme technical concerns were more important than cost and agency determined that the cost to the agency to bring the lower cost offeror up to the technical level of the eventual awardee outweighed the cost advantage of the offeror with the lower technical rating.

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**B-236189.2, January 8, 1990**

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**Procurement**

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**Specifications**

- Brand name/equal specifications
- ■ Equivalent products
- ■ ■ Salient characteristics
- ■ ■ ■ Descriptive literature

In "brand name or equal" procurement, agency properly determined that awardee's offered "equal" item was acceptable based on descriptive literature in bid, even though taken largely from brand name manufacturer's commercial literature, since it indicated awardee's intent to furnish items meeting the specified salient characteristics in the same manner as the brand name item.

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**B-236311, B-236313, January 8, 1990**

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**Procurement**

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**Payment/Discharge**

- Federal procurement regulations/laws
- ■ Revision
- ■ ■ Cost accounting

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 89-56, which would revise FAR § 47.303-6 and the clause at FAR § 52.247-34 to except heavy or bulky freight from the normal requirement that supplies delivered by truck be made available at the truck's tailgate.

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**Procurement**

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**Contract Types**

- Supply contracts
- ■ Shipment terms

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) Case No. 89-54 which would revise: 1) FAR § 43.205(f) to allow inclusion of the clause at FAR 52.243-6 to provide a basis for requiring contractors to account separately for changed work if the estimated cost of a change, or a series of related changes, exceeds \$100,000, 2) FAR § 15.804-6 to require identification of all costs incurred before the submission of a contract pricing proposal, and 3) FAR §§ 15.805-5 and 43.204(b) to provide for field pricing reviews in connection with equitable adjustments.

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**B-236833, January 8, 1990****90-1 CPD 32**

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**Procurement**

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**Small Purchase Method**

- Quotations
- ■ Evaluation
- ■ ■ Technical acceptability

A procuring agency's technical evaluation of a proposed alternate product resulting in its rejection as technically unacceptable will not be disturbed absent a clear showing that the agency has acted unreasonably.

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**B-237193.3, January 8, 1990****90-1 CPD 33**

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Reconsideration motions

A request for reconsideration must be filed at the General Accounting Office (GAO) not later than 10 days after the basis for reconsideration is known or should have been known and the filing of a protest in the interim with the General Services Administration Board of Contract Appeals does not toll the time for filing with the GAO.

**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ Evaluation criteria
- ■ ■ Prices
- ■ ■ ■ Overhead costs

Protest that estimated cost of transporting contract items from bidder's facility to selected agency locations should not be added to bid price for purpose of evaluating f.o.b. origin bids is denied to extent that protester argues such evaluation is contrary to solicitation, because solicitation provides that bid evaluation is to include estimated transportation costs.

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**Procurement**

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**Sealed Bidding**

- Invitations for bids
- ■ First-article testing
- ■ ■ Waiver
- ■ ■ ■ Administrative determination

Protest that bidder was not informed that it could request a waiver of the solicitation's requirement of first article testing is denied where solicitation clearly provided that requirement would be waived upon approval by agency and set forth procedure for applying for waiver.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Reconsideration motions

Request for reconsideration of prior dismissal of protest as untimely filed is denied where protester argues only that it lacked knowledge of General Accounting Office Bid Protest Regulations, since protesters are on constructive notice of the regulations as they are published in the Federal Register and Code of Federal Regulations.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Second request for reconsideration is denied where it establishes no legal or factual basis for reversing or modifying earlier decisions.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Unit prices

Protest that bid was improperly rejected as nonresponsive for failure to price a subitem is denied where it has not been established that another, priced subitem was sufficiently identical to the omitted item to establish a pattern of bidding from which the omitted price can be inferred.

**Procurement**

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**Competitive Negotiation**

- All-or-none offers
- ■ Acceptance

Solicitation that grouped eight sonar transducers in one package for purposes of an all-or-none procurement, instead of further subdividing the group into two packages ("build to specification" and "build to print"), as suggested by protester, was not unduly restrictive of competition; the agency had a reasonable basis for concluding that inclusion of eight transducers in one group, based on similarity of function and commonality of materials and production processes, would best meet its minimum needs by promoting efficiency and economy, and that the protester's approach may have tended to reduce competition overall.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Submission time periods
- ■ ■ Adequacy

Protest that agency allowed insufficient time for preparation of proposals is denied where period allowed exceeded the statutorily mandated minimum time and did not preclude full and open competition.

**Procurement**

---

**Bid Protests**

- GAO procedures
- ■ Interested parties

Protester is not an interested party to maintain protest against the contracting agency's cancellation of a solicitation where protester's bid was nonresponsive to the solicitation.

**Procurement**

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**Bid Protests**

- Allegation substantiation
  - ■ Lacking
  - ■ ■ GAO review
- 

**Procurement**

---

**Bid Protests**

- Non-prejudicial allegation
- ■ GAO review

*Protest is denied where record contains no evidence that release of protester's not-to-exceed price, submitted in connection with a previously canceled sole-source solicitation, prejudiced the protester.*

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Oral solicitation
- ■ ■ Use

*Protest against use of oral solicitation is denied where protester fails to show that contracting officer unreasonably determined that use of such procedures was justified on basis of urgency, in view of information indicating that critical supplier would be unavailable if normal procurement procedures were followed.*

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**Procurement**

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**Sealed Bidding**

- Unbalanced bids
- ■ Materiality
- ■ ■ Responsiveness

*Low bid for operation and maintenance contract is materially unbalanced where price for initial 60-day mobilization period amounts to approximately 63 percent of overall price for the firm, 1-year performance period in the contract as awarded, and 22 percent of the potential 5-year contract period.*

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**Procurement**

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**Bid Protests**

- Allegation substantiation
- ■ Lacking
- ■ ■ GAO review

*Protest that contracting agency improperly considered cost savings resulting from recent award of two related contracts to one of the offerors is denied where there is no evidence that these awards were considered during the evaluation.*

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## **Procurement**

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### **Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

In a negotiated procurement the contracting agency has broad discretion in making cost/technical tradeoffs. Award to higher rated offeror with higher proposed costs is not objectionable where agency reasonably concluded that cost premium involved was justified considering the technical superiority of the selected offeror's proposal.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Downgrading
- ■ ■ ■ Propriety

Protest that contracting agency excessively downgraded proposal by overemphasizing slight weakness is denied where record shows that agency considered the weakness significant and the evaluation of the proposal was consistent with the criteria set forth in the solicitation.

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**B-237184, et al., January 10, 1990**

**90-1 CPD 43**

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## **Procurement**

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### **Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Adequacy

Certificate of competency (COC) proceedings were properly conducted where protester was given sufficient notice that its contract performance history was under review and was given an adequate opportunity to, and did in fact, present information on its own behalf with regard to that performance history to the Small Business Administration, which then considered the information in its COC deliberations.

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## **Procurement**

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### **Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Adequacy

Where the record shows that the Small Business Administration (SBA) considered all information provided to it by the protester during the certificate of competency proceeding, protest that vital information was not considered by SBA is denied.

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## **Procurement**

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### **Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Information disclosure

Agency was not obligated to furnish the protester with a copy of a pre-award survey report for use during a certificate of competency proceeding.

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## Procurement

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### Socio-Economic Policies

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ Negative determination

The Small Business Administration has the statutory authority to review a contracting officer's findings of nonresponsibility and to conclusively determine a small business concern's responsibility through the certificate of competency process.

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**B-236893, January 11, 1990**

**90-1 CPD 44**

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## Procurement

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### Contractor Qualification

- De facto debarment
- ■ Non-responsible contractors

Where procuring agency makes an award to the next low bidder after determining that the protester was nonresponsible because of an unsatisfactory record of integrity, protester's due process rights were not violated because the agency determination applied to one procurement only, which did not constitute a *de facto* debarment or suspension where due process considerations are applicable.

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## Procurement

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### Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Criteria

Contracting agency reasonably determined that bidder was nonresponsible based on information in a criminal investigation report which called into question the bidder's integrity based on conduct under recent government procurements.

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**B-236975, January 11, 1990**

**90-1 CPD 45**

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## Procurement

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### Competitive Negotiation

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ Minimum needs standards

Protest that agency—after terminating for convenience a contract initially awarded under a request for quotations (RFQ) to another firm based on determination that awardee did not satisfy all RFQ requirements—should have awarded contract to only other quoter, protester, is denied where agency reasonably found all quotes, including protester's, technically unacceptable and concluded that RFQ failed to reflect its minimum needs.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Price negotiation
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Allegation that agency manipulated amount of funding available to displace protester as low bidder is denied where record shows that contracting officer recorded amount of available funds prior to bid opening and funding amount has not changed.

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**Procurement**

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**Sealed Bidding**

- Contract awards
- ■ Propriety
- ■ ■ Funding restrictions

Where invitation for bids contains an item representing the base bid and several deductive items and at the time of bid opening no funds are available for award, under the standard "Additive or Deductive Items" clause, low bidder is the firm which bid the lowest price for the least amount of work on the base bid less all deductive items.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency's decision to reject protester's proposal was reasonable where proposal contained significant technical and informational deficiencies such that it would require major revisions before it could be made acceptable and proposal otherwise lacked a reasonable chance of award in view of technical superiority and lower price of competing offeror's proposal.

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Amendments
- ■ ■ Propriety

Protest challenging agency's decision after receipt of initial proposals to issue amendment to request for proposals (RFP) increasing the number of items to be procured, instead of issuing separate solicitation for the additional number required, is denied since a significant change in the government's requirements is a proper basis for amending an RFP after receipt of proposals.

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**Procurement**

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**Bid Protests**

- Moot allegation
- ■ GAO review

Allegation that agency should not have rejected protester's offer as unacceptable is academic, and will not be considered, where solicitation provided for award to low acceptable offeror and award-ee, not protester was low; even if protester prevailed in protest, it would not be in line for award.

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**B-236911, January 12, 1990\*\*\***

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Protester is an interested party under Bid Protest Regulations to protest that agency improperly evaluated its proposal and that request for proposals (RFP) was improperly canceled on the basis that no acceptable proposals were received, even though the protester's proposal was among the lowest ranked and highest priced.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Agency reasonably found protester's proposal was unacceptable because it failed to offer personnel with direct relevant experience as required by the RFP. The protester's assertion that the failure to have the specified experience is not deficient since the personnel it offered have broad experience in related fields and may utilize this experience for their assignments under the RFP is merely an attempt by protester to rewrite the solicitation and restate the agency's needs.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Personnel experience

Agency reasonably rejected the protester's proposal as technically unacceptable where the protester's proposed personnel did not meet the agency's specific education and experience requirements and the protester did not indicate that it could or would offer different personnel meeting these requirements.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Agency reasonably rejected the protester's proposal as technically unacceptable where the protester's proposed personnel did not meet the agency's specific education and experience requirements

and the protester did not indicate that it could or would offer different personnel meeting these requirements.

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**B-237009, January 12, 1990\*\*\***

**90-1 CPD 51**

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**Procurement**

**Competitive Negotiation**

- Contract awards
- ■ Initial-offer awards
- ■ ■ Propriety

Award to low acceptable offeror on basis of initial proposals was proper even though protester, after a pricing audit conducted by Defense Contract Audit Agency as part of the evaluation, offered to lower the price in its initial proposal below the price in awardee's initial proposal; procurement did not progress beyond the initial proposal stage so as to require request for best and final offers (BAFOs), there was no indication that the awardee would reduce its price in a BAFO, and the potential reduction in protester's price would not offset awardee's significant technical superiority.

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**B-237259, B-237259.2, January 12, 1990**

**90-1 CPD 52**

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**Procurement**

**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical superiority

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**Procurement**

**Competitive Negotiation**

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Protests challenging agency's evaluation of proposals and exclusion from the competitive range are denied where review of agency's technical evaluations of protesters' proposals indicates that they were evaluated in accordance with solicitation's evaluation criteria and that agency reasonably concluded that the proposals would require major revisions to become acceptable.

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**B-237919.3, January 12, 1990**

**90-1 CPD 53**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

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**Procurement**

**Contract Management**

- Contract administration
- ■ Contract terms
- ■ ■ Compliance
- ■ ■ ■ GAO review

Request for reconsideration of dismissal of protest that awardee does not intend to perform contract in compliance with specifications is denied as protest involves matter of contract administra-

tion and therefore is not for consideration under General Accounting Office Bid Protest Regulations.

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**B-235239.2, January 16, 1990\*\*\***

**90-1 CPD 54**

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**Procurement**

**Contract Management**

- **Contract administration**
- ■ **Convenience termination**
- ■ ■ **Competitive system integrity**

Contracting agency's determination not to terminate contract award based solely on an FBI record of an interview with a former employee of the agency indicating that the awardee bribed the former employee to help it obtain the award will not be disturbed where (1) the awardee denies the alleged wrongdoing, leaving the charges disputed; (2) a criminal investigation of the alleged wrongdoing is ongoing; and (3) the agency states that if evidence of misconduct by the awardee to support terminating the contract is uncovered, corrective action will be taken at that time.

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**B-236673, January 16, 1990**

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**Procurement**

**Payment/Discharge**

- **Liquidated damages**
- ■ **Remission**

Request for remission of liquidated damages assessed by Department of the Army is denied in the absence of a favorable recommendation by the head of the agency.

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**B-237138, January 16, 1990**

**90-1 CPD 56**

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**Procurement**

**Competitive Negotiation**

- **Offers**
- ■ **Competitive ranges**
- ■ ■ **Exclusion**
- ■ ■ ■ **Administrative discretion**

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**Procurement**

**Contractor Qualification**

- **Organizational conflicts of interest**
- ■ **Allegation substantiation**
- ■ ■ **Evidence sufficiency**

Contracting agency reasonably determined that an organizational conflict of interest existed and properly excluded the protester from competing for a contract to survey general licensees using equipment containing radioactive material (under a general license granted by the contracting agency), where the protester provides consulting services to these general licensees and performs service work for the equipment in question, because it may appear to the general licensees that the Nuclear Regulatory Commission endorses the protester to perform service work, thus creating an unfair competitive advantage which is specifically prohibited under applicable agency statutory and regulatory provisions.

**Procurement**

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**Socio-Economic Policies**

- Small business set-asides
- ■ Contract awards
- ■ ■ Price reasonableness

Award to large business which submitted low quote on small business-small purchase set-aside was improper, where the procuring agency did not specifically determine, or have any evidence to indicate, that the second low quote from a small business, which was only 6 percent higher than the price of the large business awardee, was unreasonable.

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Pre-award surveys

**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Contract awards
- ■ ■ Non-responsible contractors
- ■ ■ ■ Competency certification

Rejection of small business' low offer and award of a contract to the second-low offeror was improper where the agency found low offeror nonresponsible, but improperly failed to refer nonresponsibility determination to the Small Business Administration for certificate of competency proceedings.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Proposal to provide personal services of health professionals was properly excluded from the competitive range where agency found offeror had difficulty providing similar services in the past and therefore received a low score under the evaluation factor relating to previous experience, and where agency concluded that offeror's proposed compensation for health professionals would be insufficient to recruit and retain such individuals.

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**Procurement**

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**Competitive Negotiation**

- Requests for proposals
  - ■ Terms
  - ■ ■ Service contracts
  - ■ ■ ■ Applicability
- 

**Procurement**

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**Special Procurement Methods/Categories**

- Service contracts
- ■ Applicability

Agency determination not to include Service Contract Act provisions in a contract for specialized education program is reasonable where the principal purpose of the contract is to procure professional services, which are exempt from the statute's coverage, notwithstanding the incidental use of service employees under the contract.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester's contention that the agency improperly determined that its proposal was technically unacceptable is denied where the allegation primarily is based on the protester's mere disagreement with the agency concerning the significance of the experience of one employee in his previous capacity, as an agency employee. Since the burden is on the offeror to submit an adequately written proposal, the agency evaluation is reasonable where the record shows that the proposal contained numerous material deficiencies.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Technical acceptability

Protester's argument that as the lowest priced offeror it is entitled to award is denied where protester's proposal was properly found to be technically unacceptable.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Evaluation criteria
- ■ ■ ■ Application

Protest alleging that contracting agency used an undisclosed evaluation criterion is denied where the record indicates that proposals were evaluated in accordance with the criteria set forth in the solicitation.

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**Procurement**

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**Small Purchase Method**

- Contract awards
- ■ Quantity reduction
- ■ ■ Propriety

An award of less than all of the line items is proper where, under a request for quotations, the agency deleted one item because sufficient funds were not available to award this item.

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**Procurement**

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**Special Procurement Methods/Categories**

- Federal supply schedule
- ■ Contract awards
- ■ ■ Propriety

Award of a contract for equipment under a nonmandatory Federal Supply Schedule is proper where agency has no "actual knowledge" of a price more advantageous to the government.

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**Procurement**

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**Special Procurement Methods/Categories**

- Federal supply schedule
- ■ Off-schedule purchases
- ■ ■ Justification
- ■ ■ ■ Low prices

Agency determination to seek a waiver from the General Services Administration to purchase outside a mandatory Federal Supply Schedule because it believes its needs cannot be met by items from the schedule is not objectionable where there is no allegation of bad faith or showing that the agency's conclusion lacked any reasonable basis.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Where a protester later supplements a timely protest with new grounds, the later raised allegations are untimely if filed more than 10 working days after the basis of protest is known or should have been known since those allegations must independently satisfy the timeliness requirements.

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**Procurement**

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**Contractor Qualification**

- De facto debarment
- ■ Non-responsible contractors

Protest that nonresponsibility determination was tantamount to a *de facto* debarment is denied where protester was awarded another agency contract and will not be precluded from competing and receiving award of future contracts, assuming it is otherwise qualified.

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## Procurement

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### Contractor Qualification

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Criteria

Protest that contracting officer's nonresponsibility determination lacked a reasonable basis is denied where determination is based upon contracting officer's reasonable conclusion that the protester did not provide the necessary proof that it would be able to comply with the required performance schedule.

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## B-237986.3, January 17, 1990

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest against alleged solicitation improprieties that were apparent prior to the closing date for the receipt of initial proposals is untimely where not filed before the closing date.

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest regarding content of discussions is untimely filed under Bid Protest Regulations since it was not filed within 10 working days of when discussions were conducted or best and final offers submitted.

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

New and independent grounds of protest, concerning the contracting agency's technical evaluation of the protester's proposal, based on debriefing are dismissed as untimely where filed more than 10 working days after the debriefing.

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## B-236765.2, January 18, 1990

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90-1 CPD 65

## Procurement

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### Contract Management

- Contract modification
- ■ Cardinal change doctrine
- ■ ■ Criteria
- ■ ■ ■ Determination

Contract may not be awarded to low bidder under solicitation which did not provide for any asbestos removal with the intent of materially modifying the contract after award to provide for asbestos removal.

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## Procurement

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### Sealed Bidding

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Contracting agency had compelling reason to cancel solicitation for renovation work after bid opening, where the solicitation did not provide for any asbestos removal and asbestos was discovered, necessitating substantial additional requirements which contracting agency reasonably determined should be performed as part of the renovation contract.

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**B-236931, January 18, 1990**

**90-1 CPD 66**

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## Procurement

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### Competitive Negotiation

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

General Accounting Office has no basis to object to questions raised by agency in regard to protester's initial proposal where protester, who argues that questions were used to unfairly reject its proposal, has not shown that the questions were unrelated to solicitation requirements or that the protester was not given adequate time in which to respond.

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**B-236943, January 18, 1990**

**90-1 CPD 67**

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## Procurement

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### Competitive Negotiation

- Requests for proposals
- ■ Evaluation criteria
- ■ ■ Sample evaluation
- ■ ■ ■ Testing

An agency properly rejected a protester's offer for video electronic news-gathering services when protester failed to timely submit a technical proposal in the form of a sample videotape, as required by the solicitation.

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**B-237211.2, January 18, 1990**

**90-1 CPD 68**

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## Procurement

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### Sealed Bidding

- Invitations for bids
- ■ Amendments
- ■ ■ Acknowledgement
- ■ ■ ■ Responsiveness

Contracting officer properly found responsive bid which failed to acknowledge receipt of a solicitation amendment that forwarded copies of drawings which were referenced in previously-acknowledged amendments.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Information submission
- ■ ■ ■ Contractor duties

Agency properly rejected protester's proposal as technically unacceptable where the proposal offered to meet all required specifications but failed to provide sufficient detail of proposed unit's actual specifications and how it would meet the solicitation's requirements.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Information submission
- ■ ■ ■ Contractor duties

Even where a request for proposals provides that award will be made on the basis of the lowest-priced proposal meeting the requirements of the solicitation, an agency properly may evaluate an offeror's failure to provide sufficient detail to allow evaluators to determine whether the solicitation's requirements will be met, where the solicitation's instructions for preparation of proposals require such detail for that purpose.

**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability
- ■ ■ ■ Information submission

Agency reasonably found bidder nonresponsible where bidder failed to provide sufficient information to permit a finding that the individual sureties on its bid bond were acceptable.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Applicability

A contracting officer's determination that a small business firm is nonresponsible need not be referred to the Small Business Administration when the determination is based upon the unacceptability of the bidder's bond sureties.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Signatures
- ■ ■ ■ Omission

A bidder's failure to sign a bid renders the bid nonresponsive; the lack of signature cannot be cured by the bidder's attendance at bid opening or by the bidder's arrangements for insurance and storage space which are not part of the bid.

**Procurement**

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**Bid Protests**

- Non-prejudicial allegation
- ■ GAO review

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ GAO review

Where protester reasonably was found nonresponsible it was not prejudiced by the method chosen to evaluate bid prices and the award of a construction contract to the only other viable bidder.

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Negative determination
- ■ ■ ■ Pre-award surveys

Protester's right to procedural due process does not require advance disclosure of pre-award survey results or an opportunity for contractor to defend position where this information is used to find the protester not responsible for a single procurement.

**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Extension
- ■ ■ ■ Administrative discretion

Contracting agency has sole discretion to extend period within which a small business concern may apply for certificate of competency.

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## **Procurement**

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### **Socio-Economic Policies**

- **Small businesses**
- ■ **Responsibility**
- ■ ■ **Competency certification**
- ■ ■ ■ **Negative determination**

General Accounting Office will not reexamine contracting agency's determination of nonresponsibility where a small business concern has not timely filed a complete application for certificate of competency with the Small Business Administration.

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**B-236930, January 19, 1990**

**90-1 CPD 74**

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## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Options**
- ■ ■ **Evaluation**

Where agency initially believed options would be exercised, it properly provided for their evaluation in solicitation, and this determination did not preclude the agency from subsequently determining that funding problems currently make it uncertain whether funds would be available to the agency to permit exercise of the options, and that bid that will not become low unless all options are exercised therefore is materially unbalanced.

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## **Procurement**

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### **Sealed Bidding**

- **Unbalanced bids**
- ■ **Materiality**
- ■ ■ **Responsiveness**

The apparent low bid on a contract for a 1-year base period and four 1-year options was properly rejected as materially unbalanced where there is a large price differential between the base and option years, the bid does not become low until the last option year, and the government has indicated it will probably not exercise the options due to funding uncertainty; there thus is reasonable doubt that acceptance of the bid ultimately will result in the lowest overall cost to the government.

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**B-236932, January 19, 1990\*\*\***

**90-1 CPD 75**

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## **Procurement**

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### **Bid Protests**

- **Allegation**
- ■ **Abandonment**

Contention that agency should have held discussions with protester before requesting best and final offers so that protester could revise its proposal to correct any deficiencies is considered abandoned where agency reported that discussions were not necessary because protester's initial proposal was technically acceptable, and protester did not rebut or otherwise comment upon agency's assertion.

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule
- ■ ■ ■ Effective dates

Protest is considered timely where it was filed in the General Accounting Office (GAO) within 10 working days after agency's initial adverse action on agency-level protest (issuance of amendment demonstrating that agency was not going to delete solicitation clause as requested by protester). Even though agency denied agency-level protest by letter more than 10 working days before protester filed protest with GAO, where protester denies receipt of agency's letter and record contains no evidence to show receipt by protester, we resolve doubt concerning timeliness in favor of protester.

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

Offeror whose direct economic interest would be affected by award of a contract under protested procurement is an interested party for purposes of protesting that preproduction evaluation clause deviates from Changes clause required by Federal Acquisition Regulation and should be deleted from solicitation.

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## Procurement

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### Competitive Negotiation

- Offers
- ■ Designs
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Preproduction evaluation clause requiring contractor to evaluate production drawings/specifications and to suggest and accept engineering changes for certain purposes before beginning production with no increase in price or delay in delivery is to be read in conjunction with Changes clause which was incorporated into the solicitation as required by the Federal Acquisition Regulation (FAR), and therefore does not represent a deviation from the FAR Changes clause or a new procurement regulation requiring publication for public comment.

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## Procurement

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### Competitive Negotiation

- Offers
- ■ Designs
- ■ ■ Evaluation
- ■ ■ ■ Technical acceptability

Use in production contract of preproduction evaluation (PPE) clause in order to shift burden to contractor to evaluate production drawings/specifications and to suggest and accept engineering changes for certain purposes before beginning production with no increase in price or delay in delivery is proper where the contractor will be compensated for its PPE efforts as part of the overall contract price.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties

Sixth lowest bidder protesting maximum age requirement for buses used in providing solicited bus service is not an interested party under Bid Protest Regulations, where the firm would not have been in line for award even if protested restriction were omitted. Protester's unsupported allegation of unspecified challenges against lower bidders is not sufficient to establish that protester would be in line for award if its protest were sustained.

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**Procurement**

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**Contract Management**

- Contract administration
- ■ GAO review

Contention that agency treated protester unfairly in administration of prior contract involve a matter of contract administration not cognizable under Bid Protest Regulations.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Price omission
- ■ ■ ■ Unit prices

Bidder's failure to include in its bid unit prices for subline items, as required by the solicitation, renders its bid nonresponsive because without these unit prices calculation of payment deductions for unsatisfactory performance cannot properly be made by agency, and bidder retains the opportunity to control the amount of these deductions after bid opening by allocating total prices to specific subline tasks that are subject to payment deductions.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Error correction
- ■ ■ Low bid displacement
- ■ ■ ■ Propriety

Agency improperly permitted correction of bid containing discrepancy between arithmetic total of line item prices and grand total price indicated in bid where either price reasonably could have been intended, and only one of which was low. Agency may not rely upon bidder's worksheets to determine which price was intended since the request for correction is considered as resulting in displacing a lower bid.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest by original awardee that agency improperly amended the solicitation and required resubmission of proposals is untimely when filed more than 5 months after protester was advised of agency action.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest by original awardee, challenging agency's release of its technical proposal, is untimely where protester had reason to know of its release more than 7 months prior to filing its protest and any actual ignorance of release is attributable to a failure to diligently pursue the information.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration that is based on arguments that could have been, but were not, raised by the protester in the course of its original protest is denied.

**Procurement**

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**Competitive Negotiation**

- Competitive advantage
- ■ Conflicts of interest
- ■ ■ Post-employment restrictions
- ■ ■ ■ Allegation substantiation

Protest that bidder should have been disqualified from competing under solicitation for services for which the owner of the bidder's company formerly served as the contracting officer's representative under a predecessor contract, an alleged conflict of interest, is denied where there is no evidence that the former employee was privy to agency information which was not publicly available, or that any action of the former employee resulted in prejudice for or on behalf of the bidder.

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## **Procurement**

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### **Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

The General Accounting Office will not review an affirmative determination of responsibility absent a showing of possible fraud or bad faith on the part of the procurement officials, or that definitive responsibility criteria in the solicitation were misapplied.

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## **Procurement**

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### **Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Pre-award surveys
- ■ ■ ■ Administrative discretion

An agency is not required to conduct a preaward survey when the information available to it is sufficient to allow the contracting officer to make an affirmative responsibility determination.

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**B-236933, January 22, 1990\*\*\***

**90-1 CPD 82**

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## **Procurement**

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### **Competitive Negotiation**

- Best/final offers
- ■ Price adjustments
- ■ ■ Misleading information
- ■ ■ ■ Allegation substantiation

Protest that firm was misled by alleged agency oral advice is denied where even if protester's version of facts were true, the record contains no evidence that protester was placed at a competitive disadvantage by the alleged oral advice.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Downgrading
- ■ ■ ■ Propriety

Downgrading of protester's proposal under one of 19 evaluation subcriteria during the best and final offer evaluation was not prejudicial to the protester because it did not materially affect source selection decision.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation

Protest that agency failed to properly follow the source selection plan (SSP) in evaluating offers is denied since SSPs are merely internal agency instructions which do not vest outside parties with rights, and agencies are only required to adhere to the evaluation scheme outlined in the solicitation.

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## **Procurement**

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### **Bid Protests**

- GAO procedures
  - ■ Protest timeliness
  - ■ ■ Deadlines
  - ■ ■ ■ Constructive notification
- 

## **Procurement**

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### **Competitive Negotiation**

- Contract awards
- ■ Award procedures
- ■ ■ Procedural defects

Protest that agency failed to timely notify protester of intent to award to another firm is denied where, even though agency erred in not providing timely notice, protester was not prejudiced.

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**B-236952, January 22, 1990**

**90-1 CPD 83**

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## **Procurement**

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### **Competitive Negotiation**

- Contract awards
- ■ Award procedures
- ■ ■ Procedural defects

Agency's failure to promptly notify unsuccessful offeror of award is a procedural defect that does not affect the validity of a contract award.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Evaluation
- ■ ■ Administrative discretion

Agency's failure to consider past performance of offeror in evaluation is unobjectionable where offeror failed to address that past performance in its proposal.

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## **Procurement**

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### **Competitive Negotiation**

- Offers
- ■ Price determination
- ■ ■ Collusion
- ■ ■ ■ Allegation substantiation

Mere fact that two or more offerors proposed to utilize the same subcontractor to perform a portion of the required work does not establish that the offerors engaged in price collusion and thus does not establish that the offerors falsely certified in their offers that they independently arrived at their prices.

**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ Negative determination

Protest challenging rejection of protester as nonresponsible is denied where protester fails to show that nonresponsibility determination by contracting agency and subsequent denial of certificate of competency by Small Business Administration (SBA) were the result of bad faith— notwithstanding protester's disagreement with contract agency's and SBA's conclusions—because record contains no evidence that government officials acted with specific and malicious intent to harm protester.

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

Affirmative responsibility determination is not subject to objection where, although awardee had experienced financial difficulties, contracting officer considered the company's financial situation and found in light of the fact that the company has become part of another corporation reportedly in a strong financial position, and has submitted satisfactory bank references, that company had the financial resources to perform the contract.

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**Procurement**

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**Contractor Qualification**

- Responsibility/responsiveness distinctions
- ■ Sureties
- ■ ■ Financial capacity

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**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Protest against agency's acceptance of awardee's four individual sureties is denied where agency investigated the sureties and found that at least two of them were acceptable.

**Procurement**

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**Contractor Qualification**

- Organizational conflicts of interest
  - ■ Allegation substantiation
  - ■ ■ Evidence sufficiency
- 

**Procurement**

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**Socio-Economic Policies**

- Small business 8(a) subcontracting
- ■ Contract awards
- ■ ■ Delays
- ■ ■ ■ Pending protests

In light of agency's broad discretion to decide to contract or not contract through the section 8(a) program, there is no legal basis to object to agency's suspension of negotiations with an 8(a) firm pending resolution of protest by another 8(a) firm involving allegations of conflict of interest on the part of the agency's technical project officer in selecting the 8(a) firm for negotiations or to the issuance of a task order for these services within the scope of an existing contract with a third 8(a) contractor.

**Procurement**

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**Specifications**

- Minimum needs standards
- ■ Competitive restrictions
- ■ ■ Geographic restrictions
- ■ ■ ■ Justification

An agency may restrict a procurement to offerors within a specified geographical area if the restriction is reasonably necessary for the agency to meet its minimum needs. Fact that the protester/incumbent performed the same services satisfactorily from a location substantially outside of the specified area does not in itself mean the restriction is unreasonable where the record provides no reason to question the agency's view that its 3-year experience with the incumbent has shown that frequent face-to-face interchange between the parties is essential to meet its minimum needs.

**Procurement**

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**Socio-Economic Policies**

- Preferred products/services
- ■ Domestic products
- ■ ■ Compliance

Milling machine accessories required for the machine to meet solicitation specifications may properly be considered as components in determining whether their cost should be considered for purposes of determining whether the machine meets the requirement that it be manufactured domestically.

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## Procurement

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### Socio-Economic Policies

- Preferred products/services
- ■ Domestic products
- ■ ■ Interpretation

An agency's evaluation of a product as domestically manufactured will not be disturbed where a foreign manufactured machine iron is transformed into a finished milling machine by a domestic manufacturer who installs domestically manufactured components and the domestic components constitute more than 50 percent of the cost of the end product.

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**B-237467, January 22, 1990**

**90-1 CPD 89**

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## Procurement

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### Sealed Bidding

- Bids
- ■ Error correction
- ■ ■ Low bid displacement
- ■ ■ ■ Propriety

Correction of bid displacing a lower bidder is not permitted unless the existence of the mistake and bid intended are substantially ascertainable from the invitation and bid itself. Where bid for services contains identical prices for monthly unit and extended yearly prices, and the only reasonable interpretation of the bid is that yearly prices were correct, agency properly allowed correction.

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**B-236373.6, January 23, 1990**

**90-1 CPD 90**

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## Procurement

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### Bid Protests

- GAO procedures
- ■ Administrative reports
- ■ ■ Comments timeliness

Protester's late receipt of agency report is not a basis for reopening protest dismissed for failure to file comments or express continued interest in the protest within 10 working days after receipt of the report; acknowledgment notice specifically informed protester of the need to advise the General Accounting Office of late receipt of report.

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**B-236742, B-236743, January 23, 1990**

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## Procurement

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### Contract Management

- Federal procurement regulations/laws
- ■ Revision
- ■ ■ Government property
- ■ ■ ■ Use

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-58, a proposal to amend FAR §§ 45.304, 51.103, 51.200, 52.204 and 52.251.2 to clarify contractors' use of government vehicles and government sources of supply.

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## Procurement

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### Noncompetitive Negotiation

- Federal procurement regulations/laws
- ■ Revision
- ■ ■ Subcontractors
- ■ ■ ■ Contract awards

General Accounting Office comments on Federal Acquisition Regulation (FAR) case No. 89-59, a proposal to amend FAR § 44.202-1 to clarify subcontract notice and consent requirements, by suggesting that the section provide that the government's designation of a specific subcontractor must be justified.

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**B-236920, January 23, 1990**

**90-1 CPD 91**

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## Procurement

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### Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

General Accounting Office (GAO) denies a protest alleging that individual sureties named on the bid bond of the low bidder are not acceptable where the protester presents no evidence to support its assertion. The acceptability of individual sureties is a matter of bidder responsibility where the contracting officer is vested with a wide range of discretion and business judgment, and GAO will not object to an affirmative determination in this type of case unless bad faith by procuring officials is shown.

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## Procurement

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### Sealed Bidding

- Line items
- ■ Cost restrictions
- ■ ■ Waiver
- ■ ■ ■ Administrative discretion

Agency has the discretion to request and receive waivers of the statutory cost limitation on one line item of low bid on family housing unit project even after bids are opened if the waiver is granted prior to award in accordance with Department of Defense procedures.

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**B-236927, January 23, 1990\*\*\***

**90-1 CPD 92**

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## Procurement

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### Sealed Bidding

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability
- ■ ■ ■ Information submission

Agency reasonably found individual surety on bid bond unacceptable, and thus properly rejected bidder as nonresponsible, where, in response to agency request for supporting information showing ownership and value of assets claimed, the surety submitted escrow agreement as a pledge of assets, but the agreement was made subject to Louisiana, rather than federal law; agency was not required to compromise the financial guarantee represented by the bid bond by making government subject, in case of default, to laws under which its rights may be less than under federal law, which otherwise applies to federal contracts.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Protester's argument that its technical proposal was substantially equal to the awardee's and thus its lower price entitled it to award is rejected where record shows that awardee's proposal was reasonably regarded as technically superior to the protester's.

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**Procurement**

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**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Technical superiority

Award to higher priced, higher technically-rated offeror is proper where solicitation provides that technical considerations are more important than price and the agency reasonably determined that the technical advantages outweighed the cost savings.

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Allegation substantiation

A protester fails to prove that the proposal evaluation process was biased or that technical evaluations were unreasonable where no independent evidence of bias is provided and the record reasonably supports the contracting agency's technical judgment.

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**Procurement**

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**Competitive Negotiation**

- Competitive advantage
- ■ Incumbent contractors

An agency is not required to equalize competition for a particular procurement by considering the competitive advantage accruing to an offeror due to its incumbent status provided that such advantage is not the result of unfair government action or favoritism.

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**Procurement**

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**Specifications**

- Design specifications
- ■ Defects
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protest that specification calling for "non-coinoperated commercial" washers and dryers is defective is denied where, contrary to protester's unsupported contention that only two types of equip-

ment—coin-operated commercial and household type—are available, the record shows that equipment meeting description in solicitation in fact is available.

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**B-237020.2, January 23, 1990**

**90-1 CPD 95**

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**Procurement**

**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest of alleged solicitation defect which is apparent prior to the closing date for the receipt of initial proposals must be filed prior to the closing date to be considered timely.

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**Procurement**

**Competitive Negotiation**

- Contract awards
- ■ Administrative discretion
- ■ ■ Cost/technical tradeoffs
- ■ ■ ■ Cost savings

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**Procurement**

**Competitive Negotiation**

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Award will not be disturbed where protester was not prejudiced by alleged improper evaluation of its proposal where even if protester's proposal received maximum point scores in challenged evaluation areas, it still would not have been rated technically superior to awardee's lower-priced proposal.

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**B-237033, January 23, 1990**

**90-1 CPD 96**

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**Procurement**

**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Descriptive literature
- ■ ■ ■ Adequacy

Where an invitation for bids required descriptive literature sufficient to determine whether the offered item conformed to the technical specifications and bidders were advised that failure to do so would require rejection of their bids, the procuring agency properly rejected as nonresponsive a bid whose descriptive literature referencing the item failed to establish that the item would meet the listed solicitation requirements.

**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Competitive ranges
- ■ ■ Exclusion
- ■ ■ ■ Administrative discretion

Exclusion from the competitive range was proper where protester's technical proposal scored substantially below technically acceptable proposals within the competitive range and would require major revisions to become acceptable.

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Ambiguity allegation
- ■ ■ ■ Interpretation

Solicitation provision is not ambiguous where its meaning is clear and an alternate interpretation suggested by protester—that an explanatory note in one exhibit of the solicitation also applied to another, different exhibit simply because both exhibits contained asterisks—is clearly unreasonable.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Apparent solicitation improprieties

Protest alleging solicitation impropriety is untimely where not filed prior to closing date for receipt of proposals.

**Procurement**

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**Payment/Discharge**

- Federal procurement regulations/laws
- ■ Revision
- ■ ■ Cost reimbursement

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-71, a proposal to add paragraph (a)(4) to the cost principle at FAR section 31.205-41 to make the Superfund tax an allowable contract cost.

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## **Procurement**

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### **Special Procurement Methods/Categories**

- **Federal procurement regulations/laws**
- ■ **Revision**
- ■ ■ **Service contracts**
- ■ ■ ■ **Service continuity**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-68, a proposal to revise FAR section 37.110(c) concerning use of the clause at FAR section 52.237-3, Continuity of Services.

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## **B-238078, January 23, 1990**

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### **Procurement**

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#### **Competitive Negotiation**

- **Federal procurement regulations/laws**
- ■ **Revision**
- ■ ■ **Construction contracts**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-78, a proposal that would prescribe new solicitation provisions for negotiated construction contracts.

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## **B-236491, B-236493, January 24, 1990**

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### **Procurement**

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#### **Payment/Discharge**

- **Federal procurement regulations/laws**
- ■ **Revision**
- ■ ■ **Prime contractors**
- ■ ■ ■ **Liquidated damages**

General Accounting Office has no objection to Federal Acquisition Circular 84-50, an interim rule revision Federal Acquisition Regulation (FAR) Subpart 19.7 and adding a contract clause at FAR section 52.219-16 to implement section 304 of the Business Opportunity Development Reform Act of 1988, Pub. L. No. 100-656, which provides for payment of liquidated damages by a prime contractor that fails to make a good faith effort to comply with a required subcontracting plan.

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### **Procurement**

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#### **Socio-Economic Policies**

- **Federal procurement regulations/laws**
- ■ **Revision**

General Accounting Office has no objection to Federal Acquisition Regulation (FAR) case No. 89-61, a proposal to amend to the cost principles at FAR Subparts 31.3, 31.6, and 31.7, which deal with cost allowability under contracts with, respectively, educational institutions, Indian tribal governments, and nonprofit organizations, to reflect recent statutory changes.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Interested parties
- ■ ■ Direct interest standards

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ 10-day rule

Protest by third low offeror against awardee is dismissed as protester is not interested party next in line for award. Subsequent protest against second low offeror, filed more than 10 working days after basis of protest was known, is dismissed as untimely and therefore does not confer standing as interested party on protester.

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**Procurement**

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**Contractor Qualification**

- De facto debarment
- ■ Non-responsible contractors

Two determinations of nonresponsibility under two contemporaneous procurements do not constitute *de facto* suspension or debarment where they are based on currently available information, reasonably showing record of unsatisfactory performance.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Small Business Administration's (SBA) failure to obtain protester's rebuttal to all of agency's unsatisfactory performance ratings did not constitute a failure to consider vital information, since SBA possessed relevant rebuttals submitted during prior certificate of competency (COC) process, and SBA states that it would have denied COCs on the basis of performance under a single contract for which the protester's rebuttal to proposed unsatisfactory performance rating was obtained and investigated by the SBA.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Responsibility
- ■ ■ Competency certification
- ■ ■ ■ GAO review

Small Business Administration's denials of certificates of competency are not subject to review absent evidence that the denials were the result of fraud, bad faith, or a failure to consider vital information regarding protester's responsibility.

**Procurement**

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**Competitive Negotiation**

- Best/final offers
- ■ Rejection
- ■ ■ Propriety

Where protester is given notice of agency's interpretation of government requirement during discussions, agency properly rejected protester's offer as unacceptable for failing to meet requirement in its best and final offer.

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**Procurement**

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**Socio-Economic Policies**

- Small businesses
- ■ Competency certification
- ■ ■ Eligibility
- ■ ■ ■ Criteria

Where agency properly found a small business concern's offer to be technically unacceptable, without questioning the offeror's ability to perform or any other traditional element of responsibility, agency is not required to refer its determination to exclude the concern's proposal to the Small Business Administration under certificate of competency procedures.

**Procurement**

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**Small Purchase Method**

- Contract awards
- ■ Propriety
- ■ ■ Contractors
- ■ ■ ■ Identification

An agency may issue a valid purchase order to a firm under a name which includes a phrase in addition to its corporate name where the firm to be bound is clearly identified and the additional phrase does not describe any other active business.

**Procurement**

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**Sealed Bidding**

- Bid guarantees
- ■ Sureties
- ■ ■ Acceptability

Bid is properly rejected where the bidder is found nonresponsible for its failure to establish the acceptability of individual bid bond sureties.

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## Procurement

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### Socio-Economic Policies

- Small businesses
- ■ Competency certification
- ■ ■ Eligibility
- ■ ■ ■ Criteria

A responsibility determination need not be referred to the Small Business Administration where it is based solely on the unacceptability of individual bid bond sureties.

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**B-236265.2, January 25, 1990\*\*\***

**90-1 CPD 104**

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## Procurement

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### Competitive Negotiation

- Discussion reopening
- ■ Propriety

Where awardee waits until after award to advise the government that certain of its proposed line items do not meet the technical specifications required by the solicitation, if agency reopens discussions to permit offeror to modify its proposal, it must conduct discussions with all offerors in the competitive range.

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**B-236988, B-236988.2, January 25, 1990**

**90-1 CPD 105**

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## Procurement

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### Competitive Negotiation

- Competitive advantage
- ■ Non-prejudicial allegation

Protester was not prejudiced by agency not disclosing government-rights software used by the awardee in its proposal since solicitation encouraged offerors to use such software, all offerors used it, and the awardee's use of such software had an insignificant effect on its proposed costs.

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## Procurement

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### Competitive Negotiation

- Offers
- ■ Evaluation errors
- ■ ■ Non-prejudicial allegation

Contrary to the protester's speculation otherwise, record reflects that competing system designs were evaluated using the same standard to determine whether they would degrade "operational missions" of an existing central processing unit—even under the protester's interpretation of the term "degrade."

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## Procurement

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### Competitive Negotiation

- Technical evaluation boards
- ■ Bias allegation
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Protester's general expression of disagreement with the conclusions of the agency's technical evaluators does not establish that their judgments were unreasonable.

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## **Procurement**

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### **Competitive Negotiation**

- **Technical evaluation boards**
- ■ **Bias allegation**
- ■ ■ **Allegation substantiation**
- ■ ■ ■ **Evidence sufficiency**

Protester was not prejudiced in the evaluation of its cost proposal where record shows that alleged irregularities in the evaluation process did not affect the final ranking of proposals.

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**B-237008, January 25, 1990**

**90-1 CPD 106**

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## **Procurement**

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### **Competitive Negotiation**

- **Offers**
- ■ **Cost realism**
- ■ ■ **Evaluation**
- ■ ■ ■ **Administrative discretion**

Cost realism analysis is reasonable where: (1) contracting officer reviewed the labor rates proposed by each offeror and requested the Defense Contract Audit Agency (DCAA) to compare the proposed rates with the average rates paid by each offeror in each labor category on a company-wide basis; (2) contracting officer adjusted proposed rates upward if average rates paid by an offeror for a particular category of labor were higher than proposed rates; and, (3) wherever possible DCAA verified that rates proposed for certain individuals named in proposals are in fact the actual rates that those individuals are paid.

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## **Procurement**

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### **Competitive Negotiation**

- **Unbalanced offers**
- ■ **Cost allocation**
- ■ ■ **Labor costs**
- ■ ■ ■ **Justification**

The concept of unbalanced bidding generally is not relevant in a negotiated procurement in which award is based upon evaluation of cost and technical factors with technical factors considered more important than cost. In any event, protest alleging that awardee's offer was unbalanced is denied where review of awardee's proposed labor rates for cost-plus-fixed-fee contract reveals that: (1) overall rates for basic year of contract and all three option years are roughly equal allowing a reasonable escalation factor in each option year; and (2) there is no evidence that proposed rates are nominal for some labor categories and enhanced in others.

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**B-237214, January 25, 1990**

**90-1 CPD 107**

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## **Procurement**

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### **Competitive Negotiation**

- **First-article testing**
- ■ **Prior contractors**
- ■ ■ **Waiver**
- ■ ■ ■ **Propriety**

Agency's decision not to waive first article testing requirement for protester, a current producer of the item being procured, was reasonable where the technical data package for the item had changed, the agency anticipated preproduction evaluation changes, and there were quality problems with protester's current production.

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## **Procurement**

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### **Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Submission time periods

Contention that awardee that submitted Certificate of Procurement Integrity with its initial proposal failed to comply with requirement that Certificate be provided as close as practicable to award is denied where awardee submitted additional Certificate after award covering the period between its initial proposal and award, performance of the protested contract has been suspended pending resolution of the protest, and statutory requirement for submission of Certificate has been suspended.

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**B-237228, January 25, 1990**

**90-1 CPD 108**

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## **Procurement**

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### **Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Bad faith
- ■ ■ ■ Allegation substantiation

Protest of award of a contract for source controlled item to approved source is denied where protester fails to demonstrate that agency's affirmative determination of awardee's responsibility was the result of fraud or bad faith on the part of the contracting officer, and solicitation did not contain a definitive responsibility criterion.

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**B-237338, January 25, 1990**

**90-1 CPD 109**

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## **Procurement**

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### **Bid Protests**

- GAO procedures
- ■ Interested parties

A protester has no standing to claim an error in a competitor's bid, since it is the responsibility of the contracting parties—the government and low bidder—to assert rights and present the necessary evidence to resolve mistake questions.

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## **Procurement**

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### **Sealed Bidding**

- Contract awards
- ■ Qualified offers
- ■ ■ Propriety

Protest that statement in a bid which was low on two of nine line items under a solicitation permitting multiple awards improperly qualified the bid is denied where the only reasonable interpretation of the statement is that it qualified bid items, other than the two, upon which the award was based.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Protester is entitled to be reimbursed for costs of its president's time in pursuing protest where protester, in accordance with prior decision of General Accounting Office, sufficiently documents president's base salary.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Protester is not entitled to recover costs of bonus paid to president where protester does not show that bonus was paid in accordance with standards set forth in Federal Acquisition Regulation.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

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**Procurement**

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**Competitive Negotiation**

- Offers
- ■ Preparation costs

Protester awarded costs in connection with successful protest is entitled to reimbursement for proposal preparation and protest costs incurred or initially paid by prospective subcontractor, where the costs were incurred by the subcontractor acting in concert with and on behalf of offeror and offeror has agreed to reimburse to subcontractor the amount ultimately recovered from the government.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Preparation costs

Where claim for costs of proposal preparation and of filing and pursuing protests is not adequately documented, claimant is not entitled to recovery.

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Cancellation
- ■ ■ Justification
- ■ ■ ■ GAO review

Where Veterans Administration (VA) properly accepted a gift of intravenous medical equipment for VA patients under statutory authority, VA is not required to reissue a solicitation for the same equipment which had previously been canceled.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Anticipated profits

Offeror has no legal entitlement to anticipated profits under canceled solicitation.

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**Procurement**

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**Noncompetitive Negotiation**

- Sole sources
- ■ Justification
- ■ ■ Intellectual property

Sole-source award of a contract for an automated mileage software database package is unobjectionable where the agency reasonably determines that only one source can supply the desired product, since only that source holds a copyright to the mileage guides upon which the software must be based.

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**Procurement**

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**Competitive Negotiation**

- Competitive advantage
  - ■ Conflicts of interest
  - ■ ■ Post-employment restrictions
  - ■ ■ ■ Allegation substantiation
- 

**Procurement**

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**Contractor Qualification**

- Organizational conflicts of interest
- ■ Allegation substantiation
- ■ ■ Evidence sufficiency

The mere employment of a former consultant to the agency who is familiar with the work required and helped prepare the specification does not confer an unfair competitive advantage or establish a conflict of interest where the facts do not demonstrate that any action of the consultant resulted in prejudice for or on behalf of the awardee, that the consultant had access to inside agency information concerning the procurement, or that the consultant's prior employment improperly influenced the evaluation and award.

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## **Procurement**

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### **Competitive Negotiation**

- **Contract awards**
- ■ **Administrative discretion**
- ■ ■ **Cost/technical tradeoffs**
- ■ ■ ■ **Technical superiority**

Contracting agency acted reasonably in selecting for award an offeror proposing to validate proposed towed buoy antenna system, by means of dynamic computer model to simulate operation of an actual buoy system, over offeror proposing a slightly less expensive, but unproven and invalidated new system.

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**B-237352, January 26, 1990**

**90-1 CPD 115**

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Apparent solicitation improprieties**

Protest challenging requirement apparent from the face of an invitation for bids is untimely where filed after bid opening.

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## **Procurement**

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### **Sealed Bidding**

- **Bids**
- ■ **Responsiveness**
- ■ ■ **Terms**
- ■ ■ ■ **Deviation**

Protester's bid was properly rejected as nonresponsive where bid stated on its face that it did not comply with a material requirement in the specification that battery backup to radio fire alarm monitoring system must transmit continuous low battery messages once the strength of such batteries dropped below a certain level.

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## **Procurement**

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### **Sealed Bidding**

- **Non-responsive bids**
- ■ **Post-bid opening periods**
- ■ ■ **Clarification**
- ■ ■ ■ **Propriety**

Agency properly refused to permit modification of nonresponsive bid to render such bid responsive as such action gives firms the option of accepting or rejecting a contract after bids are exposed, thus impairing the integrity of the competitive bidding process.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Errors
- ■ ■ Error substantiation

Agency properly rejected bid where price was so low as to be clearly mistaken and protester failed to provide evidence that its bid would have been low absent mistake.

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**Procurement**

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**Sealed Bidding**

- Contracting officers
- ■ Bad faith
- ■ ■ Allegation substantiation

Contention that procurement was tainted based on protester's allegation that contracting officer improperly released to its competitor the name of the firm which had provided a funds commitment letter to the protester is denied where record indicates only that the contracting officer, in response to a request for the name of the protester's bond surety, inadvertently misidentified the company which had issued the commitment letter as protester's surety, and later provided the correct name.

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**B-238032, January 26, 1990 ●cpd790-1 CPD 117**

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**Procurement**

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**Bid Protests**

- Forum election
- ■ Finality

General Accounting Office will not consider a protest which sets forth the same issues raised by the protester in a pending claim before the agency's Board of Contract Appeals.

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**B-235431.4, et al., January 29, 1990****Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration
- ■ ■ ■ Additional information

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**Procurement**

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**Bid Protests**

- GAO decisions
- ■ Recommendation
- ■ ■ Modification

Prior recommendation that contracting agency suspend performance on current contract, resolicit and terminate current contract if appropriate is modified on reconsideration where agency establishes urgent and compelling need for contract performance and advises that performance is substantially completed.

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Reconsideration request is denied where the protester has presented no evidence that prior decision was based on factual or legal errors.

**Procurement**

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**Contractor Qualification**

- Responsibility
- ■ Contracting officer findings
- ■ ■ Affirmative determination
- ■ ■ ■ GAO review

**Procurement**

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**Contractor Qualification**

- Responsibility/responsiveness distinctions

Since solicitation provision restricting the procurement to "previous proven producers" relates to bidder responsibility, not responsiveness of the bid, the General Accounting Office will not review an affirmative determination of bidder's responsibility in the absence of circumstances not applicable here.

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Shipment schedules
- ■ ■ ■ Deviation

**Procurement**

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**Sealed Bidding**

- Two-step sealed bidding
- ■ Offers
- ■ ■ Evaluation
- ■ ■ ■ Administrative discretion

Bid is properly rejected as nonresponsive where bid does not clearly evidence the bidders' intent to provide drawings for approval within the time period specified in the invitation for bids.

**Procurement**

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**Contract Management**

- Contract administration
- ■ GAO review

Protest that solicitation's procedural specifications relating to the processing of various contractor requests are unduly vague is denied where solicitation is clear as to the procedural requirements.

and protester's "evidence" is comprised of information as to how agency handled such requests under predecessor contract. Agency's previous actions as well as possible future actions concern contract administration matters which are not for review by the General Accounting Office.

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## **Procurement**

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### **Specifications**

- **Minimum needs standards**
- ■ **Risk allocation**
- ■ ■ **Performance specifications**

Protest that "performance type" specifications for construction of Navy vessel are restrictive of competition is denied where solicitation design risks involved are apparent and obvious to all experienced offerors. Risks are inherent in procurements, and offerors are expected to use their professional expertise and business judgment in taking these risks into account in computing their offers.

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**B-237054, January 29, 1990\*\*\***

**90-1 CPD 123**

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## **Procurement**

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### **Competitive Negotiation**

- **Contract awards**
- ■ **Administrative discretion**
- ■ ■ **Cost/technical tradeoffs**
- ■ ■ ■ **Technical superiority**

Procuring agency made a proper cost/technical analysis in determining to make award to a higher technically rated, higher cost offeror over protester's significantly lower rated, lower cost proposal where the record shows that the agency reasonably found that the protester's low cost approach may not allow for the quality of work and personnel contemplated by the solicitation as indicated by the protester's entry level labor rates and excessive hours proposed to accomplish the sample task.

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**B-237245, et al., January 29, 1990\*\*\***

**90-1 CPD 124**

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## **Procurement**

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### **Sealed Bidding**

- **Contract awards**
- ■ **Propriety**
- ■ ■ **Performance specifications**
- ■ ■ ■ **Waiver**

Protest that bidder's proposed roofing system did not satisfy a solicitation requirement that the roof have a Class A fire rating is denied where record indicates that the roofing system in fact satisfied the requirement.

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**B-237282, January 29, 1990\*\*\***

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## **Procurement**

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### **Socio-Economic Policies**

- **Preferred products/services**
- ■ **Domestic products**
- ■ ■ **Construction contracts**

Under a construction contract, elevator dispatching system which is to be incorporated into the building constitutes construction material under the Buy American Act. Therefore, awardee's foreign made group overlay controls, as components of the system, do not violate the act's prohibition against the use of foreign construction material.

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## **Procurement**

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### **Competitive Negotiation**

- **Contract awards**
- ■ **Administrative discretion**
- ■ ■ **Cost/technical tradeoffs**
- ■ ■ ■ **Technical superiority**

Award to higher priced, higher technically rated offeror is not objectionable where technical considerations outweighed cost in solicitation's award criteria, and the agency reasonably concluded that the awardee's superior proposal provided the best overall value.

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**B-237746, January 29, 1990**

**90-1 CPD 126**

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## **Procurement**

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### **Sealed Bidding**

- **Bid guarantees**
- ■ **Sureties**
- ■ ■ **Acceptability**

Bid was properly rejected where the bidder is found nonresponsible for its failure to establish that individual bid bond sureties were acceptable.

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**B-237964.2, January 29, 1990**

**90-1 CPD 127**

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **GAO decisions**
- ■ ■ **Reconsideration**

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## **Procurement**

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### **Socio-Economic Policies**

- **Small businesses**
- ■ **Contract awards**
- ■ ■ **Eligibility**

General Accounting Office will not review an agency's actions under the Section 8(a) program absent a showing that agency officials have violated regulations or engaged in fraud or bad faith.

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**B-238131, January 29, 1990**

**90-1 CPD 128**

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Apparent solicitation improprieties**

Protest challenging an alleged impropriety apparent from the face of a solicitation is untimely where filed after the closing date for receipt of proposals.

**Procurement**

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**Bid Protests**

- GAO procedures
  - ■ GAO decisions
  - ■ ■ Reconsideration
- 

**Procurement**

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**Bid Protests**

- GAO procedures
- ■ Protest timeliness
- ■ ■ Significant issue exemptions
- ■ ■ ■ Applicability

An untimely protest will not be considered under the significant issue exception to the bid protest timeliness requirements where the issue raised is not one of widespread interest to the procurement community.

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**Procurement**

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**Bid Protests**

- GAO procedures
- ■ GAO decisions
- ■ ■ Reconsideration

Request for reconsideration of prior decision dismissing protest is denied when based on repetition of arguments and facts considered when previous protest was dismissed.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Offers
- ■ ■ Clarification
- ■ ■ ■ Propriety

Protest that agency held discussions with awardee is denied because clauses included in final contract document, which protester contends indicate that discussions were held, did not affect the agency's assessment that awardee's proposal satisfied the requirements of the RFP.

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**Procurement**

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**Competitive Negotiation**

- Discussion
- ■ Propriety
- ■ ■ Allegation substantiation
- ■ ■ ■ Evidence sufficiency

Even if it is shown that discussions were held with any offeror other than the awardee, whether with the protester or other disappointed offeror, protester did not suffer any competitive prejudice since alleged discussions did not give awardee an unfair competitive advantage by permitting it to make its proposal acceptable or otherwise improve it.

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## **Procurement**

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### **Competitive Negotiation**

- **Contract awards**
- ■ **Initial-offer awards**
- ■ ■ **Propriety**

Contracting agency did not abuse its discretion in proceeding with award on an initial proposal basis to the low offeror even though protester submitted a letter offering to reduce its costs. Agency was not required to conduct discussions as a result of protester's letter, which was submitted 4 months after initial proposals were received and just a few days before award was made, when the suggested reductions were not substantiated in the letter and the likelihood of significant reductions must be balanced against agency's interest in making a timely award without the time and expense of discussions.

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**B-237285, January 30, 1990**

**90-1 CPD 133**

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## **Procurement**

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### **Noncompetitive Negotiation**

- **Contract awards**
- ■ **Sole sources**
- ■ ■ **Propriety**

A contracting agency has a reasonable basis for determining that only one source can meet its needs for elevator maintenance services where only two sources expressed interest in maintaining the elevators and one of the two sources had been determined nonresponsible under solicitation for identical services less than 1 month before based on its poor past performance.

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**B-237733.2, January 30, 1990**

**90-1 CPD 142**

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Protest timeliness**
- ■ ■ **Apparent solicitation improprieties**

Protest alleging improprieties apparent on the face of the solicitation but filed after the bid opening date is untimely.

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## **Procurement**

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### **Bid Protests**

- **GAO procedures**
- ■ **Interested parties**

Firm which submitted a "no bid" response to a procurement because contracting agency denied its request for an extension of the bid opening date, but which did not timely protest the agency's action, is not an "interested party" under the General Accounting Office's Bid Protest Regulations for the purpose of challenging the awardee's responsibility or the responsiveness of its bid.

**Procurement**

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**Competitive Negotiation**

- Contract awards
  - ■ Propriety
  - ■ ■ Evaluation errors
  - ■ ■ ■ Materiality
- 

**Procurement**

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**Competitive Negotiation**

- Requests for proposals
- ■ Terms
- ■ ■ Compliance

Award to offeror whose proposal in negotiated procurement failed to conform to material specification requirement concerning computer workstation was improper where waiver of requirement resulted in competitive prejudice.

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**Procurement**

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**Contractor Qualification**

- Responsibility/responsiveness distinctions
- 

**Procurement**

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**Sealed Bidding**

- Bids
- ■ Responsiveness
- ■ ■ Certification
- ■ ■ ■ Omission

Bidder's failure to submit properly and completely executed certification regarding debarment, suspension, proposed debarment and other responsibility matters with bid at bid opening does not affect firm's material obligations under solicitation and therefore does not render bid nonresponsive.

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**Procurement**

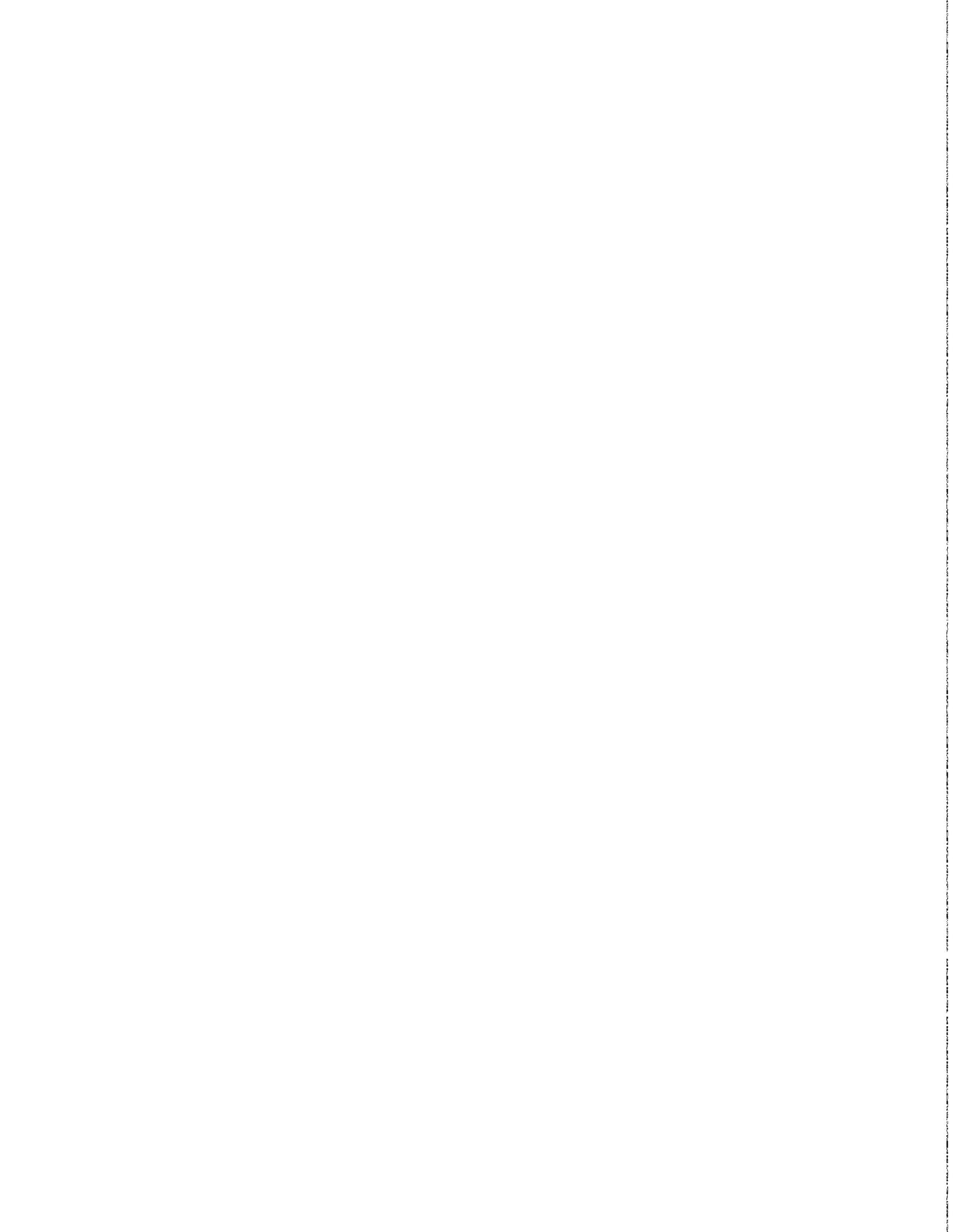
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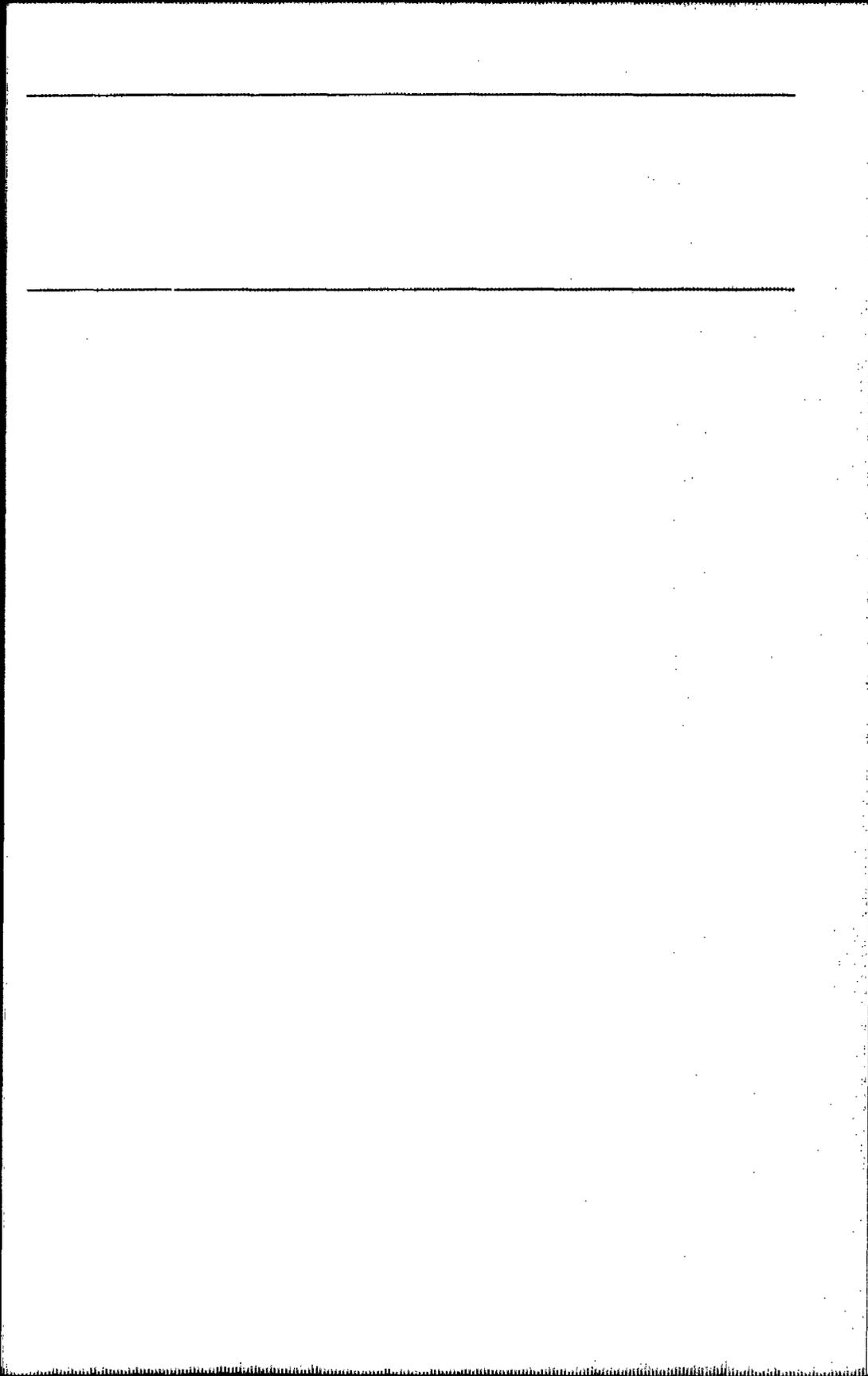
**Sealed Bidding**

- Invitations for bids
- ■ Post-bid opening cancellation
- ■ ■ Justification
- ■ ■ ■ Sufficiency

Procuring agency's cancellation of invitation for bids (IFB) after bid opening is proper where agency reasonably determined that IFB improperly omitted requirement for bid and performance bonds which it reasonably found were necessary to ensure the continuous performance of essential stenographic services.

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